

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JEFFREY R. PITTMAN**

**APPELLANT,**

**v.  
STATE OF MISSOURI**

**RESPONDENT.**

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DOCKET NUMBER WD72020

DATE: February 22, 2011

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Appeal From:

Callaway County Circuit Court  
The Honorable Clifford E. Hamilton, Jr., Judge

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Appellate Judges:

Division Three: Cynthia L. Martin, Presiding Judge, James E. Welsh and Gary D. Witt, Judges

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Attorneys:

Kent Denzel, Columbia, MO, for appellant.

Shaun J. Mackelprang and Jayne T. Woods, Jefferson City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JEFFREY R. PITTMAN,**

**APPELLANT,**

**v.**

**STATE OF MISSOURI,**

**RESPONDENT.**

No. WD72020

Callaway County

Before Division Three Judges: Cynthia L. Martin, Presiding Judge, James E. Welsh and Gary D. Witt, Judges

Jeffrey Pittman appeals from the motion court's denial of his Rule 24.035 motion after an evidentiary hearing. Pittman contends the motion court erred because: (1) he received ineffective assistance of counsel when plea counsel unreasonably advised Pittman that the State's video surveillance tape was more inculpatory when viewed on a large screen; (2) he received ineffective assistance of counsel when plea counsel unreasonably failed to present evidence at sentencing that Pittman used prescription drugs in addition to selling drugs; and (3) the trial court entered sentence and judgment for a class A felony, when Pittman only pleaded guilty to and was convicted of a class B felony.

**AFFIRMED.**

**Division Three holds:**

(1) The fact that Pittman entered a plea of guilty based on advice of counsel did not establish that the plea was involuntary or coerced. The voluntariness of the plea is also supported by the transcript of the guilty plea proceedings. The court interrogated Pittman at length, including asking him if the decision to plead guilty was Pittman's and whether that was what he wanted to do. The motion court found that Pittman's testimony, that had plea counsel not advised him that the video was more inculpatory on a larger screen, he would not have pled guilty, was not credible. The trial court's findings are not clearly erroneous.

(2) Pittman conceded that evidence of his abuse of prescription medications without proper prescriptions would have constituted an admission to uncharged felony offenses for possession of controlled substances. Pittman did not establish that plea counsel failed to employ a reasonable strategy during Pittman's sentencing hearing and, thus, did not establish the performance prong.

(3) Given the State's concession that the sentencing court's judgment is in error, justice dictates that a *nunc pro tunc* order be issued, pursuant to Rule 84.14, to correct the judgment imposing sentence to reflect that Pittman was convicted of a class B felony and not a class A felony.

**Opinion by: Cynthia L. Martin, Judge**

February 22, 2011

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